

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CENTRAL RAILROAD, INC.,
Plaintiff,

v.

SPRINGFIELD TERMINAL RAILWAY
COMPANY and BOSTON AND MAINE
CORPORATION,
Defendants

Civil Action No.: 04-30235-MAP

**PLAINTIFF'S REQUEST FOR HEARING AND/OR DECISION ON ITS MOTION TO
STRIKE THE DECLARATION OF ROGER D. BERGERON FILED IN SUPPORT OF THE
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND/OR FOR OTHER
APPROPRIATE RELIEF**

The plaintiff, New England Central Railroad, Inc. ("NECR"), requests that this Honorable Court mark its Motion to Strike the Declaration of Roger D. Bergeron filed in Support of the Defendants' Motion for Summary Judgment and/or for other Appropriate Relief, before the hearing date on the cross motions seeking summary judgment, presently scheduled for May 17, 2007, on the grounds that if the court were to provide the alternative relief sought by the NECR that: (1) the Court order that Mr. Bergeron produce an expert written report setting forth a complete statement, basis, and the reasons for his opinions pursuant to Fed. R. Civ. P. 26(a)(2)(B); (2) the NECR be given an opportunity to depose Mr. Bergeron; (3) the NECR be given time to retain and identify its own expert concerning the matters on which Mr. Bergeron opines; and (4) the NECR be provided an opportunity to file with the Court an affidavit opposing the assertions made by Mr. Bergeron; then the parties are going to need time to comply and draft the necessary reports and schedule the deposition.

For all of the foregoing reasons, the NECR requests that this Honorable Court schedule a hearing on which to hear arguments on the its *Motion to Strike the Declaration of Roger D. Bergeron in Support of Defendant/Counterclaimant's Motion for Partial Summary Judgment* or decide the motion on the papers prior to May 17, 2007. In accordance with L.R. 7.1(D), the NECR states that oral argument may assist the Court and it wishes to be heard, and, therefore, requests that the Court schedule a hearing on the within motion.

Respectfully submitted,
NEW ENGLAND CENTRAL RAILROAD, INC.,
by its attorneys,

/s/ Richard A. Davidson, Jr.

Michael B. Flynn BBO# 559023

Richard A. Davidson, Jr. BBO# 552988

FLYNN & ASSOCIATES, P.C.

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Quincy, MA 02169

(617) 773-5500

Dated: May 7, 2007
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CERTIFICATE OF SERVICE

I, Richard A. Davidson, Jr., hereby certify that a true and accurate copy of the attached *Plaintiff's Request for Hearing and/or Decision on its Motion to Strike the Declaration of Roger D. Bergeron filed in Support of the Defendants' Motion for Summary Judgment and/or for other Appropriate Relief* was sent by 1st Class U.S. Mail, facsimile, and electronic mail to Robert B. Culliford, Esq., Sr. Vice-President and General Counsel, Pan Am Systems, Inc., 14 Aviation Avenue, Portsmouth, NH 03801-2894 and Eric L. Hirschhorn, Esq., Winston & Strawn LLP, 1700 K Street N.W., Washington DC 20006.

Signed under the pains and penalties of perjury this 7th day of May, 2007.

/s/ Richard A. Davidson, Jr.

Richard A. Davidson, Jr.

BBO# 552988